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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1987

ALABAMA BOARD OF PARDONS AND PAROLES, EALON M. LAMBERT, JOHN THOMAS PORTER, and RAY MORROW, Members of the Board of Pardons and Paroles of the State of Alabama, and the STATE OF ALABAMA,

PETITIONERS,

VS.

RICHARD MARK ELLARD,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent, Richard Mark Ellard, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Eleventh Circuit's opinion in this case. That opinion is reported at 824 F.2d 937.

QUESTION PRESENTED

Did a constitutionally protected liberty interest arise from Alabama's statutory scheme which placed particularized standards and criteria on its parole board's ability to revoke an executed parole?

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STATEMENT OF THE CASE

Richard Mark Ellard entered a plea of guilty to a charge of murder in the first degree and assault with intent to murder in 1972 in Blount County, Alabama. He received a sentence of life plus twenty years. He subsequently received an additional life sentence on a plea of guilty to murder in Georgia to run concurrent with the Alabama life sentence. (D. 19, pp. 1, 2).[1]

Ellard began serving his sentence in Alabama but was granted a parole from Alabama custody on March 2, 1981. He was issued a Certificate of Parole from the Alabama Board of Pardons and Paroles (hereinafter, "the Board") which explicitly stated that he was "released" subject only to not violating "the specific conditions of parole" listed on the certificate. (D. 19, p. 2; D. 5, Exh. A, p. 22). Upon his physical release from Alabama custody, he began to serve his separate sentence in Georgia's prisons. (D. 19, p. 4). Ellard never violated any of the conditions of his parole. (D. 5, Exh. A., pp. 20, 21).

Subsequent to the granting of the parole, public opinion was brought against the Board for its action in paroling Ellard. (D. 19, p. 3). The Board asked Attorney General Charles Graddick if it could revoke a parole "which had been legally issued and executed." Graddick not only opined that it could but instructed the Board's members to "reconsider and revoke the parole granted." (D. 19, p. 3; D. 5, Exh. A, p. 4).

On July 15, 1982, the Alabama Board of Pardons and Paroles ordered the revocation of Ellard's parole even though he had violated none of its conditions. The only "reasons" given for the revocation were "Attorney General's Opinion dated 4/17/81"

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[1]References to the original record will be in parentheses and will refer to the docket number and the page number of the submission where important. E.g., (D. 10, p. 6). References to th Appendices will be in parentheses with parts "A" through "E" referring to the Appendix of the Petitioner and "F" through "H" referring to the Appendix of the Respondent.

and "New Evidence Submitted." (D. 19, p. 3; D. 5, Exh. A, pp. 1, 20). As a result thereof, instead of having his conditional liberty from Alabama prisons, Ellard was returned to the prisons of Georgia with a detainer from Alabama that will require him to serve his life plus twenty years in Alabama prisons should he be released from Georgia custody. (D. 19, p. 3).

The Alabama statutory scheme related to paroles and revocations thereof is found in § 15-22-1 through § 15-22-40 Code of Alabama (Appendix C, F).[2] This statutory scheme places particularized standards and criteria on the Parole Board's authority to revoke a parole it has granted. It explicitly states that "the limitations and restrictions on the powers of the board or the members thereof shall be strictly construed." § 15-22-38. The authority of the Board to revoke or take back a parole is limited to circumstances (1) under which the parolee has violated a condition of his parole; or (2) the parole was void ab initio due to the failure of the parole board to follow statutory requirements in granting parole. §§ 15-22-29 and 32; § 15-22-40.

Subsequent to the revocation of his parole, Ellard challenged that decision in the Alabama courts asserting, inter alia, that his federal constitutional rights to substantive due process, procedural due process, and equal protection were violated by the revocation. The Supreme Court of Alabama, in a sharply divided five to four decision, denied Ellard relief. The majority decision recognized that Ellard had been duly paroled from Alabama custody and that his parole could not be revoked without a "due process hearing." Ex parte Ellard, 474 So.2d at 759-60 (Ala. 1985). Nonetheless, the majority determined, under

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[2] § 15-22-24 was broadly amended by the Alabama legislature in 1982 to add subsections (c) through (j). Thus, at the time of Ellard's parole, § 15-22-24(i) did not exist and there was no authority for the Board to transfer a prisoner to serve a sentence in another jurisdiction with a detainer for the rest of the Alabama sentence. (Appendix C, F).

a federal law analysis, that the Parole Board had the "inherent authority" to rescind its action if it determined it had made a mistake in carrying out its duties. It did not base its decision upon a state law interpretation of the authority granted the parole board under Alabama law. Ex parte Ellard, 474 So.2d at 760-763.

Ellard then filed his federal Petition for Habeas Corpus. That Petition again raised issues of substantive due process, procedural due process, and equal protection. The district court summarily, and without a full record, denied relief to Ellard but limited its consideration to what the State asserted was "the federal question" as stated in brief:

> This case presents only one federal question ... Does a convict have a constitutionally protected interest in a parole, which does not have the effect of placing him at large in the free world.

(Appendix A, p. 18).

There is no factual dispute that Ellard was incarcerated in Georgia's prisons to serve his Georgia sentence upon his release on parole from Alabama's custody. (D. 19, p. 3).

The Recommendation of the Magistrate adopted this position of the State as:

> the simple issue in this case and that is whether or not under federal law, Richard Mark Ellard was entitled to the protection of due process of law when the Board revoked a parole which in the opinion of the Magistrate, had ill-advisedly been granted to Ellard.

(Appendix A, p. 18).

The Magistrate then found as a matter of law that Ellard had no due process rights because Ellard had been taken to the Georgia prison system based on a detainer when he was released from Alabama custody. (Appendix A, pp. 19-20).

Based upon that finding of no due process interest, the Magistrate concluded that Ellard had no equal protection interest either. (Appendix A, p. 2).

The district court, over the timely filed objections of Ellard, adopted the opinion of the Magistrate and held:

> Where, as here, the Petitioner has not received any liberties because of the parole and the possibility of future liberty is purely speculative this Court is not of the opinion that a liberty interest is at stake.

(Appendix A, p. 6).

The Eleventh Circuit found it unnecessary to determine whether Ellard had a protected liberty interest arising solely from the due process clause itself since he had a liberty interest arising from the Alabama statutes. Ellard v. Alabama Board of Pardons and Paroles, 824 F.2d 937, 943-944 (11th Cir. 1987). It consequently reversed the case and remanded it to the district court for a determination as to whether Ellard's substantive and procedural due process rights (as well as his rights under the equal protection clause) were violated by the revocation of his parole. Ellard, 824 F.2d at 946.

SUMMARY OF ARGUMENT

This case is not worthy of consideration by this Court under Rule 17. Contrary to the Rule 17 bases cited by the state, the Eleventh Circuit opinion below applied settled principles of federal constitutional law to unambiguous Alabama statutes which have now been amended so that the unique facts involved are extremely unlikely to recur. See, e.g., § 15-22-24(i), Code of Alabama.

The State poses the primary issue as being whether or not Ellard had a "constitutionally protected liberty interest" in his parole. Since at least 1981, it has been clear that a constitutionally protected liberty interest in a parole is created by a state statutory scheme which places substantive limitations on decision-maker discretion. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 466-467, 101 S.Ct. 2460, 2465-2466 (1981). This principle was strongly reiterated last term by the majority and dissenting opinions in Board of Pardons v. Allen, ___ U.S. ____, 1075 S.Ct. 2415, 2419-2422, 2423 (1987). See also, Olim v. Wakinekona, 461 U.S. 238, 249, 103 S.Ct. 1741, 1747 (1983); Hewitt v. Helms, 459 U.S. 460, 472, 103 S.Ct. 864, 971 (1982); Vitek v. Jones, 445 U.S. 480, 489, 100 S.Ct. 1254, 1262 (1979); Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 11, 99 S.Ct. 2100, 2106 (1979). The Court of Appeals simply applied this principle to the Alabama statutory scheme which provided that once the Parole Board had granted a parole, that Board's discretion to return Ellard to Alabama's prisons was limited to two circumstances: (1) a violation of the terms of parole, § 15-22-32, Code of Alabama; or (2) if the parole is deemed void due to the failure of the parole board to follow the state statutory requirements in granting parole. § 15-22-40; Ellard v. Alabama Board of Pardons and Paroles, 824 F.2d at 943, 944.

It is further well settled that once a liberty or property interest has been created by state law, the substantive and procedural process which flows from that protected interest is determined by federal law. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 540-42, 105 S.Ct. 1492-93 (1985) (property interest); Vitek v. Jones, 445 U.S. at 490-91, 100 S.Ct. at 1262-63 (1979) (liberty interest).

Since the District Court denied Ellard's claim summarily and on the pleadings based solely upon its erroneous determination that Ellard had no constitutionally protected liberty interest, this case was properly reversed and remanded for an evidentiary hearing on all issues.

ARGUMENT

I. THIS CASE DOES NOT PRESENT QUESTIONS OF (1) WHETHER A PROTECTED LIBERTY INTEREST IS CREATED BY A "MERE INTERSTATE TRANSFER" OF A PRISONER; (2) WHETHER A PROTECTED LIBERTY INTEREST ARISES FROM THE DUE PROCESS CLAUSE ITSELF BY "ANY PAROLE"; OR (3) WHETHER A FEDERAL COURT IS BOUND BY A STATE COURT INTERPRETATION OF STATE LAW.

This case exemplifies what can happen when a state attempts to create a legal basis for reversing a constitutionally protected but politically unpopular parole decision. In light of the arguments made by the Board and some erroneous statements of fact, it is important to first clarify what this case is not about.

This case in no way raises the issue of whether a state by merely linguistically designating as a parole an interstate transfer of a prisoner creates a liberty interest in that interstate transfer. Of course, if this were a case of a mere "interstate transfer", Ellard would have no protected liberty interest. Olim v. Wakinekona, 461 U.S. 238, 103 S.Ct. 1741 (1983); Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2632 (1976).

The Petitioner does not in this case claim a constitutionally protected liberty interest in a "mere interstate transfer." Yet, the Board continues to argue that this issue is present. In numerous instances in its Petition, from its Questions Presented through its arguments, the Board incorrectly says or implies in one manner or another that such is the case. (Petition for Writ of Certiorari, pp. I, 3, 6, 9 fnte. 2, 12, 13, 18, 20, 33, 42, 44, 49-50).

The Board further confuses this issue by its continuing reference to § 15-22-24(i), Code of Alabama, as if it were in existence and available for the Board to have utilized when Ellard was granted his parole from Alabama's custody in 1981. That section of the Code provides for the Board to transfer an Alabama prisoner to "any other jurisdiction ... in response to

a properly filed detainer" and provides that upon satisfaction of the detainer, the prisoner shall not be released without further order of the Board. However, § 15-22-24(i) was enacted after Ellard's parole on March 2, 1981 and was not effective until March 30, 1982. For the Board to argue that the constitutional validity of such a statute is worthy of consideration by this Court because it is novel and the Court "has never had occasion to address the liberty interest issue in the context of an interstate prison transfer by parole" is disingenuous at best.[3] (Petition for Certiorari, pp. 30. See also, Petition for Certiorari, pp. 6, 12-13, 20, 49-50).

Similarly, there is simply no basis for the Board to state in its "Questions Presented" that Ellard's parole "has no effect on the prisoner or his sentences, except to transfer him to the other state's prisons".

The Board's own actions precipitating this litigation belie the argument. Ellard was conditionally released from the custody of Alabama's prisons when he was given a plain old standard parole under Alabama law. Compare, Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972). If that parole was valid he could not ever be returned to Alabama's prisons unless he violated a condition of his parole. Conversely, if the action of

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[3]The prominent reliance upon § 15-22-24(i) is even more curious in light of the Board's acknowledgment in a brief filed in the Supreme Court of Alabama in this case that "this statute has no place in this litigation, for the simple reason that such was not enacted until about one year after the Ellard parole." (Appendix H).

§ 15-22-24(i) in any event does not provide for a "parole" of any kind but provides for an interstate transfer by the Board of Pardons and Paroles.

The Petition also asserts at pp. 27-28 and 44 that this Court should grant certiorari in this case because there is "wide spread use of parole for interstate prison transfers." Facts supporting this statement and its corollary implication that states expect the return of such prisoners to their prisons without a violation of conditions of parole are not in the record in this case.

the Board which the Attorney General demanded be taken back resulted only in Ellard serving his Alabama sentence in Georgia until released at which time he would automatically be reincarcerated in Alabama prisons for the rest of the Alabama sentence, then no action--much less the ones in this case--would have been taken by the Attorney General or the Board.

The position of the Board in its original "Statement of the Facts" filed in the Circuit Court of Montgomery County, Alabama follows:

> On or about March 2, 1980, the Parole Board attempted to grant or granted the Petitioner a parole, which had the immediate effect of releasing the Petitioner to Georgia's prison authorities. The ultimate effect of this parole would be to put the Petitioner at large on parole should his Georgia sentence ever be set aside or if he should ever be paroled or pardoned by Georgia.
>
> (D. 12, Exh. A).

The remarks of the Attorney General Graddick at Ellard's "revocation hearing" are also telling:

> I have studied it, and to my knowledge, there are no degrees of or categories of parole in this State. I have never heard of a parole to the streets or a parole to detainer or parole to Georgia. You are paroled, if you are paroled, period. And we, I think, we can agree to that. Now, if you parole someone and there is a detainer in another state, then the only way we can be assured that that individual is going to the other state, is if that other state wants him. If they don't the parole means he goes to the streets.
>
> (D. 12, p. 15).

The entire Supreme Court of Alabama recognized throughout its majority and dissenting opinions that Mark Ellard had been paroled and that the parole could not be revoked "without due process." Ex parte Ellard, 474 So.2d 758, 763, 766 (Ala. 1985).[4]

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[4]The Board cites to the opinion of the Alabama Court of Criminal Appeals which was bottomed on its finding that Ellard could not be "paroled to a detainer" and, therefore, that he was not paroled by the action of the parole board which was only an interstate transfer. Ellard v. State, 474 So.2d 743, 752-753 (Ala. Cr. App. 1984). As stated above, this finding was rejected
(Footnote Cont'd.)

The "mere interstate transfer" argument at the core of the Board's asserted basis for believing certiorari should be granted cannot credibly be made in this case.

Second, this case does not now present an issue of whether the execution of "any parole" creates a protected liberty interest arising out of the due process clause itself. As is indicated above, much of the Board's argument for certiorari review relates to the nature of Richard Mark Ellard's interest in his parole in comparison with that of the parolee in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972). Petition, pp. 34-44. This might be probative if the Eleventh Circuit had determined that Ellard had a liberty interest "inherently deserving of protection" arising out of the due process clause itself. It explicitly did not decide that issue. Ellard, 824 F.2d at 941, 942; see Argument II, infra.

Third, this is not a case which turns upon a question of whether a state court's interpretation of a state statutory scheme is controlling on a federal court. The highest court of Alabama and the Eleventh Circuit Court of Appeals agree that Richard Mark Ellard was paroled and that due process attached to that parole. Ex parte Ellard, 474 So.2d at 763; Ellard, 824 F.2d at 943-945. See also, Argument II, infra.

(Footnote Cont'd.)
by the Supreme Court of Alabama. The four justice dissenting opinion found the mere transfer argument to be "a frivolous argument in that every relevant document, including a signed and sealed Certificate of parole, indicates that Ellard was to be paroled, not transferred." Ex parte Ellard, 474 So.2d at 766.

II. THE COURT OF APPEALS APPLIED SETTLED PRINCIPLES OF LAW IN FINDING A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN RICHARD MARK ELLARD'S PAROLE.

The Board recognizes as "hornbook law" that once a liberty interest "has been created by state law and become vested in a person" then that liberty interest is protected by the Fourteenth Amendment federal law due process clause. Petition at 48.[5] If a liberty interest was created by state law, then the Eleventh Circuit appropriately remanded the case for a determination as to what due process rights flowed from that protected liberty interest to Ellard.[6]

The analysis of the Eleventh Circuit and its limited conclusions in this case are mandated by what is now settled law from this Court.

There can be no doubt that citizens can receive constitutionally protected liberty interests either from the due process clause itself or from the laws of the state. Hewitt v. Helms, 459 U.S. 460, 466; 103 S.Ct. 864, 869 (1982).[7] The analysis to be applied in determining whether a due process interest arises out of state law is extensively explicated in the majority decision and the dissenting opinion in Board of Pardons v. Allen, ___ U.S. ___, 107 S.Ct. 2415 (1987), decided last term. The dissenting Justices in Allen thought that the Montana statutory parole scheme gave such discretion to the Board in granting

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[5]Although Ellard also urged reversal in the Eleventh Circuit based upon a liberty interest arising from the due process clause itself, the Court determined it was unnecessary to decide that issue in light of Ellard's liberty interest arising out of state law. Ellard, 824 F.2d at 942.

[6]Ellard's equal protection claim was also appropriately remanded for determination since the District Court denied it based upon its finding of no liberty interest. Ellard, 824 F.2d at 946, fnte. 12.

[7]The Petition sets up a straw issue by intermingling analysis which might be appropriate if the Court of Appeals had found a liberty interest arising out of the due process clause itself.

parole that there was no entitlement created from which sprung a protected liberty interest. But, the entire Court agreed that if a statutory scheme places "real limits" or "substantive limitations" on "decision maker discretion" then there is a liberty interest created. Allen, ___ U.S. at ___, 107 S.Ct. at 2422, 2423. This explicit standard has been applicable since at least 1981, Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 101 S.Ct. 2460 (1981). In Olim v. Wakinekona, 461 U.S. 238, 249, 103 S.Ct. 1741, 1747 (1983), the Court adopted language from Justice Brennan's concurring opinion in Dumschat and said that an inmate must show "that particularized standards or criteria guide the State's decision maker" in order to have a constitutionally protected liberty interest arising from state law. The Court further found that if state regulations "place no substantive limitations on official discretion" then no liberty interest arises out of the statutory scheme. Olim, 461 U.S. at 249, 103 S.Ct. at 1747.

In applying these settled principles to the Alabama statutory scheme, the Eleventh Circuit reached the "unexceptionable" conclusion that the Board was "constrained by 'substantive limitations' on its authority to rescind" Ellard's parole. Ellard, 824 F.2d 937, 942, 944; Vitek, 445 U.S. at 490, 100 S.Ct. at 490.

The Alabama parole statutory scheme on the date of Ellard's parole placed both real, substantial, and particularized limitations on the discretion of the Board to revoke or take back a parole. §§ 15-22-1 through 40.[8]

§ 15-22-38 explicitly limits the Board by stating starkly:

> The duties imposed upon the members of the board of pardons and paroles by this article are mandatory, and the limitations and restrictions on the powers of the board or the members thereof shall be strictly construed.

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[8]Again, the 1982 amendment to § 15-22-24 added new subsections (c) through (j) which were not previously a part of the statutory scheme. § 15-22-24(i) is, therefore, irrelevant to this proceeding. (Appendix C, F).

The only circumstance under which the Board can revoke a parole is if the parolee violates a condition of his parole as is specified in his certificate of parole. § 15-22-29 and 32. § 15-22-40 also provides that a parole made contrary to the provisions of the statutory scheme shall be null and void. Under no other circumstance does the scheme allow for the taking back of a parole.[9]

The Board has no discretion here but is severely and explicitly limited creating a protected liberty interest as the Eleventh Circuit found. The Board argues that the Eleventh Circuit should have ignored the statutory scheme as it asserts that federal courts are bound by the decision of the Alabama Supreme Court that Ellard's parole could be taken back after he was given due process if the Board determined it made a mistake in carrying out its duties. Ex parte Ellard, 474 So.2d at 763. However, the Board grossly misconstrues the import of that decision. First, in spite of some inexact language of the court, the decision implicitly recognizes that Ellard had a liberty interest. Ellard, 824 F.2d at 944, 945. Otherwise, axiomatically, no process would be due. Second, and more importantly here, the Court's analysis was an analysis of what could be done under federal constitutional law consistent with due process under Alabama's statutory scheme--not what the statutory scheme said or meant. The conclusions of the Alabama Supreme Court were

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[9]The statutory scheme in no way distinguishes between paroles from Alabama's prisons. The liberty interest created here by state law is not dependent upon whether the parolee has a detainer upon him from another jurisdiction or not. Thus, the Board's arguments attempting to distinguish due process implications of paroles to the street, as opposed to paroles when a parolee has detainer, are not only erroneous but inapt since the Eleventh Circuit decision did not rely on a liberty interest arising from the due process clause itself. Compare, e.g., Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), and Board of Pardons v. Allen, ___ U.S.___, 107 S.Ct. 2415 (1987).

based totally upon the federal due process analysis of a Second Circuit Court of Appeals case which is not on point. Tracy v. Salamack, 440 F.Supp. 930 (S.D.N.Y. 1977), modified and affirmed, Tracy v. Salamack, 572 F.2d 393 (2nd Cir. 1978). That case involved whether the State of New York could amend its work-release laws so as to cause certain classes of prisoners in the work-release program to be taken back into the main prisons. Ellard was granted a parole and that parole was not revoked pursuant to any new statute of general application.[10] Nonetheless, the Salamack case found a federally protected liberty interest created by the New York laws. Ex parte Ellard, 474 So.2d at 761. This only confirms that the Alabama Supreme Court analysis was not based upon state statutory interpretation but was rather based on federal constitutional law which required it to find that Ellard had a liberty interest protected by the due process clause. Ex parte Ellard, 474 So.2d at 763.

Since the District Court summarily dismissed Ellard's claim based upon its erroneous finding of no liberty interest, the only proper course of action for the Eleventh Circuit was to reverse the case and remand it for the District Court to determine what process was due, which is also a federal question governed by federal law. See, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 540-42, 105 S.Ct. 1492-93 (1985) (property interest); Vitek v. Jones, 445 U.S. at 490-91, 100 S.Ct. at 1262-63 (1979) (liberty interest).

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[10]Such a hypothetical revocation of Ellard's executed parole would invoke other constitutional questions not involved in this Petition. See, Bearden v. Georgia, 461 U.S. 660, 665, 103 S.Ct. 2064, 2069, fnte. 7 (1983).

CONCLUSION

The effort of the Board to present the case as an appropriate case for review under Rule 17 must fail. Stripped of the arguments based upon erroneous references to "mere interstate transfer" and the irrelevant § 15-22-24(i), Code of Alabama, this is a peculiar case based upon unique facts not likely to arise again and decided by the application of well-settled principles of federal constitutional law. It is not worthy of consideration of this Court under Rule 17.

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that prior to filing the foregoing or immediately thereafter, I caused to be delivered a true and correct copy of same, United States postage prepaid and correctly addressed to Joseph G. L. Marston III, Assistant Attorney General of the State of Alabama.

Done this the 29th day of January, 1988.

Ralph I. Knowles, Jr.
ATTORNEY FOR RESPONDENT

AFFIDAVIT OF MAILING

To the best of my knowledge, this Brief in Opposition to the Petition for Writ of Certiorari has been placed in the United States Mail at 4:00 p.m. on the 29th day of January, 1988, correctly addressed to the Clerk of the United States Supreme Court and postage prepaid.

Ralph I. Knowles, Jr.

Sworn to and subscribed before me this 29th day of January, 1988.

Notary Public, State at Large

NO. 87-849

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APPENDIX
TO
RESPONDENT'S BRIEF IN OPPOSITION

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APPENDIX F:

CODE OF ALABAMA (1975)

ANNOTATION TO §§ 15-22-24

The 1982 amendment, effective March 30, 1982, inserted "hereinafter referred to as 'the board,'" in subsection (a), and added subsections (c) through (j).

APPENDIX G:

UNITED STATES CONSTITUTION

AMENDMENT XIV, § 1

[Citizenship Right Not to Be Abridged by States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX H:

EXCERPTS FROM BOARD'S

SUPREME COURT OF ALABAMA BRIEF

IN THE SUPREME COURT OF ALABAMA

S. C. NO. 83-1352

EX PARTE: RICHARD MARK ELLARD,

IN RE: RICHARD MARK ELLARD

(PETITIONER)-APPELLANT

VS.

STATE OF ALABAMA, EALON M. LAMBERT JOHN THOMAS PORTER, JACK CURTIS LUFKIN INDIVIDUALLY AND AS MEMBERS OF THE BOARD OF PARDONS AND PAROLES, AND JOSEPH HOPPER INDIVIDUALLY AND AS COMMISSIONER OF THE ALABAMA DEPARTMENT OF CORRECTIONS

(RESPONDENTS)-APPELLEES

AN APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA (NO. CC 82-1216-K)

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA (3 DIV. 927)

BRIEF AND ARGUMENT OF APPELLEES IN REPLY TO THE AMICUS CURIAE

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

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IV.

SECTION 15-22-24(i), CODE OF ALABAMA, 1975, WAS NOT ENACTED AT THE TIME OF ELLARD'S PAROLE.

The Amicus complains primarily about a portion of the Court of Criminal Appeals opinion which discusses transfers under Section 15-22-24(i), Code of Alabama, 1975. The Respondents must agree with the Amicus that this statute has no place in this litigation, for the simple reason that such was not enacted until about one year after the Ellard parole.

The obvious purpose of Section 15-22-24(i) is to permit the Board to transfer prisoners to other jurisdictions without meeting the statutory requirements which it should have met but did not meet in the case of the Ellard parole. However, the Ellard parole was issued on March 2, 1981, and Section 15-22-24(i) did not become law until 3:00 p.m., March 30, 1982. Act 82-153, Acts of Alabama, 1982, pages 183-185.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1985, I did serve copies of the foregoing on the Attorneys for the Petitioner-Appellant and the Amicus Curiae by mailing the same to them first-class postage prepaid and addressed as follows:

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